

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4097 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

CHINUBHAI N SOSHI

Versus

JAIN RAMNIKAL HARGOVANRAM (DELETED)

Appearance:

MR MC BHATT for Petitioner

None present for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 10/12/96

ORAL JUDGMENT

Heard learned counsel for the petitioner.

2. The petitioner who was the opponent in M.A.C.T. Case No.125 of 1981 has filed this writ petition in which challenge has been made to the judgment dated 6.10.82, of the Motor Accident Claims Tribunal (Main), Banaskantha District at Palanpur, in the M.A.C.T. Case No.125 of 1982.

3. The petitioner was the owner of the vehicle involved in the accident and the respondent No.1 was the passenger therein. The accident has resulted in the injuries caused to the respondent No.1 and as such he filed a claim application in which Rs.75,000/- were claimed as compensation. The Insurance Company was also impleaded as a party. Under the judgment dated 6.10.82, the Tribunal had awarded Rs.60,000/- as compensation to the claimant and further directed that the Insurance Company should discharge the liability of the award amount to the extent of Rs.7,500/-.

4. The learned counsel for the petitioner does not dispute that the judgment of the Motor Accident Claims Tribunal is appealable. He further admitted that the petitioner has filed appeal being First Appeal (Stamp No. 1486/83) before this Court. So, in the present case, the alternative remedy was not only available to the petitioner but the said remedy has already been availed of. The learned counsel for the petitioner has drawn attention of this Court to the order of this Court dated 14th June 1990. From this order, it comes out that the appeal filed by the petitioner against the judgment of M.A.C.T. has been dismissed, may be for want of prosecution. So the alternative remedy has been availed of by means of filing of First Appeal and the same has been dismissed. Meaning thereby the judgment of the M.A.C.T. has attained finality and it is not open to the petitioner to challenge the validity of the judgment by filing this Special Civil Application. Once the judgment of the M.A.C.T. challenged in Special Civil Application has attained finality by dismissal of appeal by this Court, this Court sitting under Article 227 of the Constitution of India will not go on the question of validity of the same otherwise it will amount to permitting the petitioner to avail two parallel remedies against same judgment which normally should not happen. It is a case where the petitioner has availed the alternative remedy and the same has been dismissed. A reference in this respect may have to the decision of Supreme Court in the case of Bombay Metropolitan Region Development Authority, Bombay vs. Gokak Patel Volkart Ltd. & Ors., reported in JT 1995(1) SC 155. The Supreme Court, in para-13 of the judgment, observed as under:

"We are of the view that the point taken by the appellant is of substance. This is a case, where there is not only the existence of an alternative remedy but the writ petitioner actually had availed of that remedy. The writ petitioner's

appeal before the Statutory Authority was pending. In that view of the matter this writ petition should not have been entertained."

This case is one step ahead where the appeal has also been dismissed. On a question that parallel remedies in respect of the same matter at the same time ordinarily is not permissible, reference may also have to the decision of Supreme Court in the case of Awadh Bihari Yadav and Ors. vs. State of Bihar & Ors., reported in 1995(6) SCC 31.

5. In the result, this writ petition fails and the same is dismissed. Rule discharged. No order as to costs.

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(sunil)